BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Jurisdictional Separations Reform and Referral to the Federal–State Joint Board	CC Docket No. ~~98-147~~ 80-286

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Table of Contents

Summary

GSA concurs with the recommendation by the Federal–State Joint Board on Jurisdictional Separations ("Joint Board") to freeze most of the factors in the separations process for a period up to five years. The proposed moratorium will provide stability for all carriers — and the end users subject to their charges — while the Commission and Joint Board address comprehensive reform of the entire jurisdictional separations process.

GSA explains that dramatic cost shifts are occurring as a result of major technological changes. Moreover, there are major changes in the scope and pattern of network usage resulting from a confluence of factors, including the explosive growth of Internet usage, more wideband data transmission, and cost–driven revisions in carriers' interexchange rate structures. Although the separations rules have weathered previous evolutions, the pace of current developments makes stability nearly impossible to achieve. The proposed freeze will permit the separations process to adjust to these changes and also permit the Commission to address issues such as the appropriate separations treatment of unbundled network elements ("UNEs"), Internet traffic, and services jointly provided over digital lines.

In addition, GSA recommends that waivers to modify frozen category relationships and allocation factors be granted only in circumstances such as mergers or acquisitions of carriers under the separations rules. As GSA explains, this procedure will provide the maximum stability during the term of the freeze and help to ensure that all carriers are treated equitably.

Finally, GSA concurs with the Joint Board that reporting obligations for separations data should continue during the freeze. However, GSA departs from the Joint Board's recommendations by urging the Commission to continue requirements for price cap carriers to update jurisdictional allocation factors for use in evaluating any separations procedures proposed in the future.

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COMMENTS
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The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Public Notice ("Notice") released on August 15, 2000. The Notice seeks comments and replies on issues concerning a recommendation by the Joint Board to freeze most of the factors employed in the jurisdictional separations process.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

On July 21, 2000, the Joint Board released a *Recommended Decision* urging the Commission to initiate an interim freeze of most parameters in the jurisdictional separations process.[1] The freeze would encompass all category relationships and allocation factors for price cap carriers, and allocation factors for carriers under rate–of–return regulation.[2] The freeze would be mandatory, and continue for five years or until the Commission takes further action following a recommendation by the Joint Board.[3]

The Joint Board postulates that increases in use of the switched network to connect with the Internet have resulted in major shifts in overall usage patterns.[4] Consequently, the Joint Board requests the Commission to obtain data on the impact on Internet traffic volumes on jurisdictional allocations in recent years.[5] Moreover, the Joint Board recommends that the local dial equipment minute ("DEM") factor in the separations process be fixed at a value reflecting data for the past 12 months, if the Commission finds that Internet traffic is jurisdictionally interstate in the proceeding instituted in response to the remand by the U. S. Circuit Court of Appeals.[6]

In the Notice, the Commission requests comments on the Joint Board's recommendations.[7] The Commission also seeks usage data from incumbent local exchange carriers ("LECs") and Internet service providers ("ISPs").[8]

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1 Notice, p. 1, citing *In the Matter of Jurisdictional Separations Reform and Referral to the Federal–State Joint Board*, CC Docket No. 80–286, Recommended Decision released July 21, 2000 ("*Recommended Decision*").

2 *Id.*, p. 2.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*, citing *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter–Carrier Compensation for ISP–Bound Traffic*, Public Notice, CC Docket Nos. 96–98 and 99–68, FCC 00–227, released June 23, 2000 ("*Notice to Address Remand*").

7 Notice, pp. 1–2.

8 *Id.*, p. 2.

II. THE COMMISSION SHOULD ADOPT THE JOINT BOARD'S RECOMMENDATION FOR A FREEZE OF CATEGORY RELATIONSHIPS AND ALLOCATION FACTORS.

A. The freeze will provide stability while the Joint Board develops separations reforms.

Jurisdictional separations is a vital part of the regulatory regime for incumbent LECs that leads to the establishment of rates and charges for most interstate and intrastate services.[9] In the first step of jurisdictional separations, carriers assign costs to categories of plant and expenses.[10] In the second step, carriers divide the costs in each investment and expense category between interstate and intrastate jurisdictions.[11] Some of these "separations" are based on relative use, while some are based on a fixed formula such as the 25 percent loop cost allocation factor.[12]

In the *Recommended Decision*, the Joint Board asks the Commission to freeze most of the parameters of the jurisdictional separations process for five years or until the Commission takes further action for overall separations reform.[13] For price cap carriers, the freeze would include factors used in both steps of the separations process, but for rate–of–return carriers the freeze would encompass only those factors employed in the second step.[14]

The Joint Board explains that the primary reason for the moratorium is to ensure "greater stability and predictability" for the separated costs in a period of dramatic changes.[15] Factors in the first part of the separations process are excluded from the

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9 *Recommended Decision*, para. 4.

10 *Id.*, para. 5.

11 *Id.*

12 *Id.*

13 *Id.*, para. 11.

14 *Id.*

15 *Id.*, para. 17.

freeze for rate–of–return carriers in order to ensure that these smaller firms have greater flexibility to recover the costs of new investments that may have a significant impact on their total plant balances.[16]

GSA concurs with the recommendation for the freeze because of the need to provide stability for all carriers — and the end users subject to their charges — while the Commission and Joint Board contemplate comprehensive reform of jurisdictional separations. For example, the Joint Board notes that significant cost shifts are occurring as a result of accelerating technological changes.[17] These changes include deployment of packet switching, major increases in the use of fiber optics, and the implementation of digital subscriber line ("DSL") technologies throughout many parts of the nation.[18] The separations rules have weathered many such technological changes in the past. However, the diversity and staggering pace of recent changes make stability nearly impossible to achieve, particularly since separations calculations are necessarily performed on a regional basis.

Along with significant shifts among types of investments, there are major changes in the scope and pattern of network usage.[19] These changes result from the confluence of many factors, including greater dependence on telecommunications generally, much more data transmission, explosive growth of Internet usage, and cost–based alterations in carriers' rate structures that make calling across the country no more expensive (indeed often less expensive) than calling between contiguous local exchange areas. Whatever the reason, a moratorium is required for stability as these

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16 *Id.*, para. 21.

17 *Id.*, para. 15.

18 *Id.*

19 *Id.*, para. 17.

exogenous factors exert geographically variable impacts on interstate and intrastate usage of the network deployed for voice, data and Internet transmission.

Moreover, the emergence of new technologies and regional increases in local exchange competition require consideration of additional issues regarding the separations process. These issues include the appropriate separations treatment of unbundled network elements ("UNEs"), Internet traffic, and services jointly provided over DSLs. The freeze will provide stability while the Commission and Joint Board address these topics and develop procedures that will foster competition to ensure the maximum number of service alternatives for consumers of all services.

In summary, the Joint Board's recommendation will provide important benefits for consumers. Ultimately, the need for separations may diminish as open competition develops and as traditional distinctions between types of service providers become more blurred. However, elimination of jurisdictional separations procedures should only be viewed as a long–term objective, until there is more competition in local exchange markets. In the interim, the proposed freeze will provide stability while the Commission and Joint Board develop the procedures that are vital to accommodate current technologies and the increasingly diverse needs of users for all varieties of telecommunications services.

B. The freeze will allow adjustments to changes in the compensation procedures for Internet traffic.

On February 26, 1999, the Commission released a Declaratory Ruling stating that Internet traffic is not subject to the reciprocal compensation provisions for local telecommunications services in the Telecommunications Act.[20] However, on March

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20 *Inter–Carrier Compensation for ISP–Bound Traffic*, Declaratory Ruling in CC Docket No. 96–88 and Notice of Proposed Rulemaking in CC Docket No. 99–68, FCC 99–38, 14 FCC Rcd 3689 (1999), at 3690, 3695–3703, citing Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("Telecommunications Act"), at §251(b)(5).

24, 2000, the U. S. Circuit Court of Appeals vacated several provisions of that order.[21] In remanding the matter, the court stated that the Commission should revisit its conclusion that Internet traffic is jurisdictionally interstate and not subject to reciprocal compensation arrangements developed through negotiations or proceedings before state regulatory agencies.[22]

In response to the remand, the Commission initiated a proceeding to develop a record for findings on the jurisdictional nature of Internet traffic.[23] In its Comments and Reply Comments in that proceeding, GSA urged the Commission to find that Internet traffic is primarily interstate, and not properly subject to reciprocal compensation arrangements.[24]

The development of inter–carrier compensation plans for Internet traffic is one of the most complex and controversial tasks now facing the Commission. Because of the large potential impact of these compensation plans, an additional step to ensure stability is warranted. The Joint Board recommends that the DEM factor be fixed at 95 percent of the current level based on data from 12 months preceding implementation of the freeze if the Commission finds that Internet traffic is jurisdictionally interstate.[25]

GSA concurs with the Joint Board's recommendations concerning the DEM factor freeze. Moreover, the potential impact of rulings concerning the jurisdictional nature of Internet traffic — and potential challenges after the Commission releases findings in this matter — provide additional justification for a freeze encompassing all

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21 *Bell Atl. Tel. Companies v. FCC*, 206 F.3d 1 (D.C. Cir.).

22 *Id.*, at 3–6.

23 *Notice to Address Remand*, pp. 1–2.

24 Comments of GSA, July 21, 2000, pp. 8–11; and Reply Comments of GSA, August 4, 2000, pp. 3–10.

25 *Recommended Decision*, para. 29.

allocation factors in the separations process while the Commission develops a comprehensive plan for reform.

III. WAIVERS FOR CHANGES IN FROZEN SEPARATIONS PARAMETERS SHOULD BE GRANTED SPARINGLY.

The Joint Board recommends that carriers not be allowed to modify the frozen parameters except through a waiver granted by the Commission.[26] Mergers and acquisitions are the only general conditions for exceptions identified in the *Recommended Decision*.[27]

GSA concurs with the Joint Board that permission to change the frozen parameters should be granted sparingly. This procedure will provide the maximum stability during the term of the freeze and help to ensure that all carriers are treated equitably.

Moreover, GSA concurs with the Joint Board that in the event of a merger or acquisition, the surviving carrier should be required to recalculate its frozen factors and category relationships.[28] As the Joint Board states, the surviving carrier should calculate composite parameters based on weighted averages for the firms involved in the merger or acquisition.[29] This compositing procedure should yield category relationships and allocation factors that most accurately reflect the operation of the telecommunications network under the new organizational structure.

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26 *Id.* para. 32.

27 *Id.*, paras. 32–35.

28 *Id.*, para. 33.

29 *Id.*

IV. CARRIERS SHOULD CONTINUE TO COLLECT AND REPORT SEPARATIONS DATA DURING THE FREEZE.

The Joint Board recommends that carriers continue to report separations results in the format prescribed by the current rules during the duration of the freeze.[30] Moreover, the Joint Board states that the Commission should not require price cap carriers to conduct studies to assign costs to the categories in Part 36 of the rules and also not require either price cap or rate–of–return carriers to compute jurisdictional allocation factors during the period.[31] The Joint Board asserts that these steps are justified because they will simplify the separations process for all LECs.[32]

GSA concurs with the Joint Board that LECs' reporting obligations for separations data should continue. As GSA explained in comments last year in CC Docket No. 99–253, the existing accounting and reporting procedures for incumbent LECs have numerous benefits.[33] For example, annual reporting of separated data in a uniform national format is useful for state regulators in continuing surveillance over local exchange services provided by incumbent LECs that still have substantial market power over end users and other carriers.[34]

With reporting, it is valuable to continue to display updated data. Thus, GSA departs from the Joint Board's recommendations by urging the Commission to continue requirements for price cap carriers to update jurisdictional allocation factors during the term of the freeze. The annual reports will have limited value if they do not

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30 *Id.*, para. 31.

31 *Id.*

32 *Id.*

33 *In the Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, CC Docket No. 99–253, Comments of GSA, August 23, 1999, pp. 3–11; and Reply Comments of GSA, September 9, 1999, pp. 3–13.

34 *Id.*, Reply Comments of GSA, pp. 3–8.

reflect current data, particularly since the underlying conditions are changing rapidly, as discussed above. Moreover, updated data will be helpful in assessing cost allocation procedures that are proposed to replace the current separations process.

Particularly with recent mergers, the carriers under price cap regulation have very substantial resources, and should not be unreasonably burdened by a requirement to continue the studies and analyses in the separations process during the next few years. However, to reduce the burden on the smaller entities, GSA concurs with the Joint Board's recommendation to eliminate the requirement for rate–of–return carriers to calculate updated factors during the freeze.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 25th day of September, 2000, by hand delivery or postage paid to the following parties.

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